IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5362 of 2007()

AGAINST THE ORDER DATED 03/08/2007 IN CMP 2531/2007 IN SC.499/2006 of II ADDL. DISTRICT COURT, PALAKKAD
CRIME NO.O.R.NO.1/2006/NCB/RIU, THIRUVANANTHAPURAM

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: PETITIONER/ADDL.5TH ACCUSED:

VASANTHILAL PATTIDAR @ VASANTHILAL,
S/O. RAMEWAR PATTIDAR, RINGSA VILLAGE,
MANSOOR DISTRICT, MADHYAPRADESH.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE:

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1. THE DYSP,
NARCOTIC CELL BUREAU, RIU, THIRUVANANTHAPURAM.

2. STATE, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY SRI.C.P.UDAYABHANU STANDING COUNSEL FOR N.C.B

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5362 of 2007

Dated this the 17th day of September, 2007

ORDER

Application for regular bail. The petitioner faces allegations under the N.D.P.S Act. He remains in custody from 22.06.2007 having been produced before the Special Judge in Kerala only on 25.06.07.

2. The Narcotic Control Bureau allegedly received discreet secret prior information that a large quantity of heroin was being transported by some accused persons. They kept the Shoranur Railway Station under surveyance and accused 1 and 2 were apprehended on 15.03.06 with 7.78 kg of heroin. Accused 1 and 2 were arrested and interrogated. The complicity of accused 3 and 4 was allegedly revealed. The 3rd accused was arrested on the next day. But accused 4 who was absconding could be arrested only on 9.9.06. In the secret information received by the N.C.B as also from the statement of the 4th accused recorded by the officials, the complicity of the 5th accused was revealed. The 4th accused had allegedly deposited an amount of Rs.30,000/- in the bank account of the son of the petitioner herein to enable him to procure the contraband article. He had allegedly supplied the contraband articles.

3. Obviously for fear that the N.C.B may not be able to file the complaint within a period of 180 days from the date of arrest of

accused 1 and 2, a complaint was filed, by the N.C.B even before the petitioner was arrested and his complicity was finally ascertained and alleged. In the complaint, 4 accused persons - accused 1 to 4 referred above alone were arrayed as accused. In the averment in the complaint, there was reference to the complicity of the petitioner herein also. But the petitioner herein was not arrayed as the 5th accused in the complaint as it was originally filed.

4. In that complaint, cognizance has already been taken and the matter is pending trial against accused 1 to 4 before the Special Court. Trial has not commenced so far, it is submitted.

5. While so, the petitioner was arrested at Mumbai on 22.06.07 and he was produced before the court concerned dealing with this case in Kerala on 25.06.07. The petitioner continues in custody from that date.

6. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner has remained in custody from 22.6.07. In as much as the petitioner's name was shown in the complaint filed against accused 1 to 4 he stands in the position as an accused and the subsequent statement recorded from him it is hit by the vice of testimonial compulsion under Article 20 (3) of the Constitution. There is therefore no satisfactory acceptable

material against the petitioner, contends the learned counsel for the petitioner. The learned counsel for the petitioner, in these circumstances, prays that the petitioner may now be enlarged on bail.

7. The learned Standing Counsel for the N.C.B opposes the application very vehemently. The learned standing counsel submits that the petitioner is involved in this crime as also in other similar crimes. The petitioner could not be arrayed as an accused earlier as clinching data about the complicity of the petitioner could not be collected by the officials before the earlier complaint was filed. Request has been made to the learned Special Judge for permission to conduct further investigation and to array the petitioner as a further accused. That petition is posted for hearing and disposal before the learned Special Judge. In any view of the matter, satisfactory data about the culpable involvement of the petitioner has by now been collected. Even eschewing the statement of the petitioner, there is satisfactory material against the petitioner. The statement of the 4th accused as also the material collected about payment of Rs.30,000/- by the 4th accused into the bank account of the son of the petitioner at the request of the petitioner is very much available even now. A bank slip has also been recovered from the possession of the 4th accused to confirm the said transaction, submits the learned Standing Counsel for N.C.B. In these circumstances, in any view of the matter, even

assuming that the N.C.B may have to file a separate distinct and later complaint against the petitioner, the petitioner does not deserve to be enlarged on bail at this stage, submits the Standing Counsel for the N.C.B.

8. I have considered all the relevant inputs. The arrest of the petitioner was on 22.6.07 and he was produced before the Special Judge on 25.06.07. The contraband articles seized is huge and Section 37 of the N.D.P.S Act squarely applies. The petitioner is entitled to be released on bail only if the petitioner is able to instill in the mind of this Court the twin satisfactions contemplated under Section 37 of the N.D.P.S Act. The allegations are serious. The petitioner is involved in other crimes. Even the initial discreet information received by the N.C.B indicates the complicity of the petitioner. The statement of the 4th accused also convincingly indicates the petitioner's complicity. The statement of the petitioner removes the last trace of doubt about his complicity. Even if the same were eschewed for the sake of arguments, there is no dearth of material at all against the petitioner. In any view of the matter, in the light of Section 37 of the N.D.P.S Act and in the light of the materials collected by the N.C.B so far, the petitioner is not entitled to be released on bail, urges the learned Standing Counsel for the N.C.B.

9. Having considered all the relevant inputs, I find merit in the opposition by the learned Standing Counsel for the N.C.B. I take note of the gravity of the allegation. I take note of the undisputed fact that the quantity of the contraband article seized is commercial quantity attracting Section 37 of the N.D.P.S Act. Bail can be granted to the petitioner, only if this Court is in a position to entertain the twin satisfactions contemplated under Section 37 of the N.D.P.S Act. Even if the evidence of the petitioner recorded immediately prior to his arrest (after the filing of the complaint against accused 1 to 4) were to be eschewed completely, it cannot be said that there are reasonable grounds to entertain the former of the two satisfactions under Section 37 of the N.D.P.S Act. That the petitioner is involved in another similar crime and is facing indictment in a Court outside Kerala is also not disputed. In these circumstances, the latter satisfaction under Section 37 of the N.D.P.S Act cannot also be safely entertained.

10. It is not for me at this stage to consider whether further investigation is permissible and whether a fresh complaint will have to be filed or not. I shall not embark on any detailed discussions on that aspect. Suffice it to say that at the moment and with the available inputs, I am unable to entertain either of the two satisfaction contemplated under Section 37 of the N.D.P.S Act. This petition must, in these circumstances, fail.

11. The learned counsel for the petitioner submits that further report has been received after quantitative analysis of the contraband article. If on such report the petitioner can satisfy the learned Special Judge that the article will not be commercial quantity, needless to say, a fresh application can be filed claiming regular bail. Such application must also be dealt with in accordance with law and on merits.

(R.BASANT, JUDGE)

rtr/-